



Larry Fenster
Senior Economist
Law and Public Policy
1133 19th St., NW
Washington, DC 20036
202-736-6513

February 16, 2005

Marlene Dortch
Secretary
Federal Communications Commission
445 12 St., S.W.
Washington, D.C. 20554

Re: Notification of Ex Parte Conversation, Request to Update Default Compensation Rate for Dial-Around Calls from Payphones, WC Docket No. 03-225

Dear Ms. Dortch:

Yesterday, Larry Fenster from MCI had a telephone conversation with Tamara Preiss, Division Chief of the Pricing Division in the Wireline Competition Bureau regarding MCI's Petition for Clarification in the above-captioned proceeding. MCI explained that it was requesting the Commission clarify it has already determined that carriers are entitled to recover the cost of tracking, reporting, auditing their payphone compensation systems, and by doing so in the text of its *First Payphone Report and Order*, has established federal jurisdiction over such surcharges, and further that market based competition would establish just and reasonable surcharges. ("Although some commenters would have the Commission limit the ways in which carriers could recover the cost of per-call compensation, we conclude that the marketplace will determine, over time, the appropriate options for recovering these costs. In addition, under the carrier-pays system, individual carriers, while obligated to pay a specified per-call rate to PSPs, have the option of recovering either a different amount from their customers, including no amount at all.")¹ More recently, the Commission recently left no doubt that carriers are not limited to any surcharge because market competition would establish just and reasonable levels for such charges ("*In a market with unregulated prices, the carriers were entitled to charge their customers a surcharge*

¹ Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128 Report and Order on Remand, FCC 96-338, (*First Payphone Report and Order*), rel. September 20, 1996, & 83.

*for per-call compensation or, indeed, to raise the retail rate to any level they think the market will bear.”*²

According to the International Prepaid Card Association, approximately seven states cap the surcharge carriers may apply to recover their payments to payphone service providers (“PSPs”) and their cost of administering payphone compensation on behalf of payphone service providers at rates that do not permit full recovery of their costs.³ MCI explained that a Colorado Administrative Law Judge (“ALJ”) had recently established a \$.52 cap on such surcharges, which did not allow MCI to fully recover the cost of administering payphone compensation on behalf of payphone service providers. MCI’s arguments in support of its understanding that the Commission has established federal jurisdiction over payphone surcharges that carriers may apply are elaborated in its comments and exceptions filed in this Colorado docket. MCI is also attaching the ALJ’s decision for review, and its comments and exceptions to the ALJ decision in the Colorado docket.

If you have any questions, please contact me at the number listed above.

Sincerely,

/s/Larry Fenster

Larry Fenster

cc: Tamara Preiss
Jon Stover

² Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128 Fifth Order on Reconsideration and Order on Remand, FCC 02-292, (“*Fifth Order on Reconsideration*”), rel. October 23, 2002, & 80.

³ International Prepaid Card Association, Petition For Reconsideration, Request to Update Default Compensation Rate for Dial-Around Calls from Payphones, WC Docket No. 03-225, filed September 27, 2004.